

FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY



## FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

### *Implementation Checklist*





## Freedom of Information and Protection of Privacy:

### Implementation Checklist

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# **Freedom of Information and Protection of Privacy: Implementation Checklist**

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## INTRODUCTION

This guide has been prepared to assist local public bodies in preparing for implementation of the *Freedom of Information and Protection of Privacy Act* (also referred to as the *FOIP Act* in this guide).

It describes some common preparatory steps which should be considered in developing and implementing procedures to meet the requirements of the legislation. Since local public bodies can differ in size, structure, and administrative processes, these preparatory steps are generic and need to be adapted to the needs of the various organizations. A simplified checklist of steps involved in implementing the *Act* is provided in **Appendix A**.

A list is also provided of some of the resources available to local public bodies to assist in implementing the *Act*.

This guide is published by the Information Management and Privacy Branch on behalf of the Minister of Labour. The Minister is responsible for the overall administration of the freedom of information and protection of privacy legislation. Further information on the *Act* or on implementation processes may be obtained by contacting:

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## RESPONSIBILITIES OF LOCAL PUBLIC BODIES IN ADMINISTERING THE FOIP ACT

In preparing to implement the *Act*, each local public body should establish internal processes and procedures suited to the organization's size, structure, specific circumstances and anticipated workload. A local public body's responsibilities include:

- receiving and responding to access requests, meeting the duty to assist applicants, and collecting fees as set out in the *Act* (**sections 6 to 14, 29 to 30 and 87**);
- deciding what information will be released including disclosures in the public interest and what information will be excepted from disclosure under the legislation (**sections 15 to 28 and 31**);
- administering the code of fair information practices to protect the privacy of individuals set out in **Part 2** of the *Act* (**sections 32 to 41**);
- dealing with the Information and Privacy Commissioner in the resolution of reviews and complaints under the *Act* (**sections 51(1) and 62 to 70**);
- assisting the public in exercising access and privacy rights by preparing a description of records for the **Local Public Body Directory of Records** which will be published by the Information Management and Privacy Branch, maintaining a listing of personal information banks, and making manuals, handbooks and guidelines

- used in decision-making available for inspection by the public (**sections 82 and 84**); and
- periodic reporting to the Information Management and Privacy Branch about the operation of the *Act* to enable the Minister to prepare an annual report for the Legislative Assembly (**section 81**).

### FOIP IMPLEMENTATION CHECKLIST

The following issues and tasks set out in steps one to eleven should be addressed before the *FOIP Act* comes into effect. Although they are arranged for the most part in relative priority, many of these tasks may be ongoing simultaneously within the implementation process.

#### **STEP 1: Establish the structure necessary to administer FOIP**

Local public bodies should establish the internal structure necessary to administer FOIP as follows:

- Appoint a FOIP Contact.** As previously indicated, there are a number of requirements relating to the administration and operation of the FOIP legislation which can only be met through some form of coordination, regardless of the size and structure of the local public body.

The extent of these tasks make it preferable for the head of a local

public body to designate an individual preferably at a senior level of the organization to assist with implementation and administration of the legislation within the organization. The head must make all decisions about delegation of authority and the structure for processing requests.

If the local public body is large or decentralized in nature, there may be a need to have FOIP Contacts in several departments or offices of the organization.

- Forecast volume and type of requests.** Local public bodies should attempt to forecast the volume and type of requests they may receive and prepare implementation plans with this forecast in mind.

This may be done by discussing FOIP issues with government departments already subject to FOIP and by contacting similar institutions in other jurisdictions (e.g., British Columbia) which are subject to similar legislation. This will assist in determining the volume of requests and the organization and resources which may be required to handle these.

- Establish an appropriate support team.** Depending on the projected volume of requests and the size and complexity of the organization, a local public body may wish to establish a team to support its FOIP Contact. The team should include senior managers as well as

representatives from each part of the organization that may be affected by FOIP. If appropriate, it could also include a representative from one or more of the following areas:

- information or records management;
  - information technology and systems;
  - legal department;
  - human resources;
  - communications;
  - archives; and the
  - elected or appointed governing authority.
- ***Other considerations.*** Learn how local public bodies in other jurisdictions have delegated authority for dealing with FOIP and the systems that they have put in place for responding to access requests.

FOIP Contacts may also wish to develop practice files in response to requests for information before the legislation comes into effect. This will permit the local public body to act in the “spirit of FOIP” in its response and to deal with any process and interpretative issues that may emerge.

## **STEP 2: Establish a training plan and conduct awareness training**

FOIP Contacts should establish a training plan. The training and

awareness sessions should begin as soon as possible to ensure that senior management and staff understand the requirements of the *FOIP Act*, as they relate to both access to information by the public and privacy protection for individuals.

This training plan should accommodate a variety of training audiences including:

- the FOIP Contact, a back-up and some program contacts who will require an in-depth knowledge of the procedural and interpretative aspects of the *Act*;
- senior staff who have been delegated decision-making responsibilities under the legislation and who will require a good working knowledge of the procedural and interpretative aspects of the *Act*;
- members of the governing authority (e.g., boards, commissions, etc.) who should understand the principles of the *Act* and its basic requirements;
- staff who have daily contact with the public and must be able to recognize and channel freedom of information and privacy requests to the FOIP Contact and answer basic queries about the legislation;
- all staff in the local public body who should be aware of the *Act*, the name and role of the FOIP Contact and basic requirements for processing access requests and protecting privacy. This general awareness can be done through briefings, the distribution of a booklet or brochure or use of

training videos provided by the Information Management and Privacy Branch.

- other specific groups, such as human resources staff and staff responsible for collection of personal information, managers responsible for internal administration and support functions such as information and records management systems, office services, finance and internal audit, and legal advisors, who must possess an in-depth knowledge of both the interpretative and procedural aspects of the *Act*.

Training materials are available from the Information Management and Privacy Branch. The Branch also coordinates the provision of courses on a fee for service basis.

### **STEP 3: Develop a communications plan**

The FOIP Contact should develop a communications plan and include:

- key messages which the local public body wishes to communicate about its responsibilities and activities in implementing FOIP;
- activities designed to make all the clients, elected and other senior officials, the public and employees aware that the *Act* applies to the particular local public body and the ways in which it may be used; and
- any special messages and approaches to communicate with

the media and special groups that interact with the local public body.

Samples of successful communication tools such as newsletters, brochures, posters, etc. are available from many public bodies already subject to the *Act*.

### **STEP 4: Develop procedures for tracking and responding to access requests**

The FOIP Contact needs to develop effective procedures to meet the time frames for processing and responding to access requests, to calculate fees, to provide statistical information to the Information Management and Privacy Branch, and to defend decisions if there is an appeal to the Information and Privacy Commissioner. These procedures should reflect the organizational approach taken to implementing FOIP in a particular local public body.

The nature and detail of these procedures will vary among local public bodies, depending on the size, complexity, and administrative structure of the organization. However, in general these procedures should address:

- receipt of requests/creation of a request file;
- locating and retrieving records/information;
- production and monitoring of notices;

- fee administration;
- application of exceptions to disclosure;
- responding to applicants;
- closure of the request file; and
- preparation for a review by the Office of the Information and Privacy Commissioner.

More detailed guidance on these procedural matters involving the processing of access requests is dealt with in training sessions for FOIP Contacts.

 **STEP 5: Pass a FOIP by-law or legal resolution**

A FOIP by-law or resolution should be developed early in the process to:

- ***designate the head of the local public body.*** Section 89(a) of the *Act* provides that a local public body must designate a person or group of persons to act as the head of the body. The head of each local public body is responsible and accountable for all decisions taken under the *Act*.

The members of the board of a local public body must designate an individual (e.g., a member of the board, chief administrative officer or someone else responsible to the governing authority) or a committee of the governing authority or the whole of the governing authority itself to act as the head.

Boards and governing authorities should make the designation either by by-law or written legal resolution, as appropriate to their rule-making authority.

- ***if desired, delegate the powers, functions and duties of the head.*** Section 89(b) of the *Act* enables the head of a local public body to delegate to any person any duty, power or function of the head. This power does not include the actual power to delegate. The nature and extent of this delegation will depend on the size, structure, and existing decision-making processes of each local public body. The delegation must be in writing and should follow the format of other by-laws or legal instruments used by the particular local public body to delegate responsibilities.

It is important to note, however, that whether or not authority is delegated, the head remains accountable for all actions and decisions made under the *Act*.

- ***adopt a fee structure under FOIP.*** The *FOIP Regulation* establishes a structure and maximum rates for charging fees under the *FOIP Act* for general records and personal information. The rates cited in the *Regulation* are maximum rates and may be confirmed or lower rates may be adopted by by-law or resolution. However, for an applicant's own personal information fees must be restricted to the cost of providing a copy of the information as required by section 87(2) of the *Act*.

## STEP 6: Review records management and archives practices

It is important to ensure that records and information management systems can enable staff to locate and retrieve records and personal information in an accurate and timely manner. This is necessary not only to conduct business efficiently, but also to meet the 30-day time limit imposed by the *Act* for responding to access requests. In addition, this will help the local public body in preparing descriptions of its records and personal information banks, and in complying with the personal privacy provisions governing the collection, use, disclosure, accuracy, protection and disposal of personal information.

Important questions to consider are:

- Is there a current inventory of record holdings and collections of personal information?
- Does the local public body have an operating and up-to-date file classification system for the filing, organization and retrieval of records, including those in electronic format?
- Are there approved retention schedules or by-laws governing the retention and disposition of the body's records, including electronic records? A retention and disposition schedule identifies classes or categories of records, prescribes how long the records are required to be kept, and authorizes the destruction of the records or

their transfer to an archival repository. Depending on the requirements of the local public body, a schedule can take the form of a resolution of the governing authority or an internal policy or procedure approved by the chief administrative officer. Note that section 34(b) of the *Act* requires the local public body to retain personal information for at least one year after using it to make a decision.

- Does the local public body have access to and use a records centre facility to provide for the storage and disposition of records no longer needed for administrative or operational purposes?
- Does the local public body have its own archives for the permanent preservation of records of enduring value or has it arranged archival services? The Provincial Archives of Alberta and the Archives Society of Alberta (ASA) may also serve as resources to local public bodies and assist in managing their archives.
- Does the local public body have a controlled system in place for the disposition of records so that sensitive and confidential records, including those in electronic formats, are disposed of by recognized and secure records management standards?

Where records management is a concern for a local public body, it may seek advice from the Association of Records Managers and Administrators (ARMA) or other organizations dealing with records. While the records management policies of the

Alberta government do not apply to local public bodies, Alberta Public Works, Supply and Services, Records and Information Management Services can provide general information on records management practices. These include guidelines for the proper disposal of records and information about the various sources of records management consulting resources, training and support which may help FOIP Contacts in dealing with records organization and management issues.

 **STEP 7: Develop Local Public Body Directory of Records entries and personal information bank descriptions**

Local public bodies must provide information to the Information Management and Privacy Branch for the Branch to publish the *Local Public Body Directory of Records*. Entry information includes:

- a description of the mandate and functions of the local public body and its components;
- a description of the records in the custody or under the control of the local public body;
- a subject index; and
- the title, business address and business telephone number of the head of the local public body.

Information Management and Privacy Branch will provide instructions on standard formats and common record descriptions to assist in providing these entries.

The local public body is also responsible for creating a listing of its personal information banks and making this available for inspection and copying by the public.

A “personal information bank” is a collection of personal information that is organized or retrievable by the name of an individual or by an identifying number, symbol or other particular assigned to an individual (**section 82(9)**). Each personal information bank must include:

- the title and location of the personal information bank;
- a description of the kind of personal information and the categories of individuals whose personal information is included; and
- the authority for collecting the personal information (**section 82(6)**).

As part of the preparation guidelines for the *Local Public Body Directory of Records*, the Information Management and Privacy Branch will provide sample personal information bank descriptions in order to help you in this description process.

 **STEP 8: Decide what information will be available to the public without a FOIP request**

Local public bodies should develop categories of records that can be released to the public without a formal FOIP request. This will enable local

public bodies to respond to information requests in the most timely and cost-effective manner.

This may be done during the review of the record holdings of a local public body in preparing for the implementation of FOIP. It involves a determination of types of records which could be subject to *disclosure without request*, as provided in section 83 of the *Act*.

Special attention should be paid to the following categories of records:

- those for which a detailed review reveals that no exception applies, especially a mandatory exception;
- those for which legislation or board resolution mandates that disclosure is possible or required; and
- those for which precedents from other jurisdictions have shown there is considerable public interest and little basis for withholding the information.

Every jurisdiction which has implemented freedom of information and protection of privacy legislation has found that there has been considerable demand for access to records relating to contracts, personal expense claims, travel records, internal audit records, and inspection records, among other types of information. Plans should be made as to how such information may be released on an informal basis.

## STEP 9: Review manuals and guidelines

**Section 84(1)** of the *Act* requires that local public bodies make available to the public any manual, handbook, or other guideline used by employees in decision-making processes that affect the public. Local public bodies must make available without request under the *Act* all substantive rules and policy directives adopted by such bodies and issued to employees for use in interpreting enactments or administering programs or activities that affect the public. This availability of decision and rule-making material is intended to open up to public scrutiny the internal operations of local public bodies and the "mechanics" of decision-making so that they may be better understood and challenged, as appropriate.

**Section 84(2)** provides that this grouping of records may be reviewed before being made available for public examination and any information that should not be disclosed in accordance with the exception criteria set out in **sections 15 to 28** of the *Act* may be severed. If information is severed, the record must include a statement that information has been severed, a description of the general nature of the severed information and the reason for the severing.

This section also requires local public bodies to provide facilities at their headquarters and any other offices that are determined to be reasonable and practical where manuals, handbooks

and guidelines may be inspected by the public. Consideration should be given to determining what public space is available for these "reading room" facilities. Often these may be a desk in the FOIP Contact's office or in an existing library facility.

**✓ STEP 10: Develop a plan to ensure compliance with the privacy protection provisions of the FOIP Act**

**Part 2** of the *Act* establishes a code of fair information practices for the collection, compilation, accuracy, protection, use, disclosure and retention of personal information. It is important that local public bodies begin to bring their programs and activities into compliance with these requirements in order to ensure that the privacy of all individuals is protected. It should be noted that the public may make a complaint about privacy violations to the Information and Privacy Commissioner, who has the authority and responsibility to investigate the complaints and issue orders requiring local public bodies to comply with certain requirements.

A privacy implementation plan should:

- include a review of current information systems (including forms) dealing with personal information to determine if they meet the requirements of **Part 2** of the *Act*;
- ensure that the requirements of **Part 2** of the *Act* (e.g., controls relating to the collection, accuracy,

protection, use, disclosure and disposal of personal information) are included in any plans for new or redesigned information technology systems dealing with personal information.

It is recognized that the full implementation of this plan is a long-term project which could stretch over several years. Nevertheless, privacy protection is an aspect of the legislation which should be planned for now by setting definite objectives and time frames.

**✓ STEP 11: Review contracting practices**

Where a record is created pursuant to a contract, legal agreement or in some other way, a local public body may have an option as to whether or not it has access to the record. The local public body has control of the record unless a contract stipulates otherwise. However, even though the custody and control of records may be reduced through a contract, the legal requirements of the *FOIP Act* may continue to apply. Where a contractor provides services for a local public body, records are normally under the control of the local public body and therefore subject to the access provisions and privacy protection requirements of the *Act*.

It is particularly important to note that personal information collected, compiled, used by or disclosed to or by persons, groups or organizations acting on behalf of the local public body

under a contract is also subject to the privacy protection provisions of **Part 2** of the *Act*. Contracts with such persons, groups and organizations must stipulate clearly that the privacy protection requirements of the *Act* are assumed by the contractor. Local public bodies should review their current contracting practices to ensure that freedom of information and protection of privacy requirements are taken into account when negotiating contracts and agreements.

Guidance on how this can be done and sample contract clauses are provided in the publication *Contract Manager's Guide to Freedom of Information, Protection of Privacy and Records Management in the Government of Alberta* produced by the Information Management and Privacy Branch.

### **RESOURCES AVAILABLE TO SUPPORT FOIP IMPLEMENTATION**

The following resources are available to local public bodies in implementing the *FOIP Act*.

#### ***Information Management and Privacy Branch, Alberta Labour***

The Information Management and Privacy Branch can provide support in the following areas:

- assistance in the development of regulations, policies and guidelines needed to administer the legislation by local public bodies where appropriate or necessary;
- advice and guidance on the implementation and operation of the

*Act*, including a "help desk" to deal with implementation issues;

- regular posting and distribution of updated FOIP legislation and policies as well as orders issued by the Information and Privacy Commissioner;
- assistance in the development of entries for the *Local Public Body Directory of Records* and the listings of personal information banks;
- organization of regular FOIP seminars and training sessions to enable FOIP Contacts and others in local public bodies to remain current on questions and trends in the fields of freedom of information and the protection of privacy; and
- provision of FOIP information on an Internet homepage.

#### ***Key Departments***

Several departments have statutory responsibilities representing the primary business of the respective local public body (e.g., Advanced Education and Career Development; Education; Health; Municipal Affairs; and others).

The key department can also assist local public bodies in resolving implementation issues regarding the *Act*.

The key department will partner with the Information Management and Privacy Branch in answering questions, resolving implementation issues, sponsoring meetings and other training forums and providing speakers

in regard to freedom of information and protection of privacy.

managing archives or in obtaining archival services.

### ***Office of the Information and Privacy Commissioner***

The Information and Privacy Commissioner provides the independent appeal mechanism for decisions made under the legislation. The Commissioner also has general oversight of the access and privacy protection provisions of the *FOIP Act*. The Office of the Information and Privacy Commissioner will participate in the overall training required for implementing the legislation through discussions of the role, practices and concerns of the Office of the Information and Privacy Commissioner in regard to the administration of the legislation.

Local public bodies should refer to the orders of the Commissioner and publications from the Office of the Information and Privacy Commissioner when applying the legislation.

### ***Records Management***

Advice on general records management practices can be obtained from the Association of Records Managers and Administrators (ARMA), which has chapters in Edmonton and Calgary.

### ***Archives Administration***

The Provincial Archives of Alberta and the Archives Society of Alberta (ASA) serve as resources to local public bodies in establishing and



## Appendix A:

### FOIP Implementation Checklist

In preparing to implement the *FOIP Act*, each local public body should establish internal processes and procedures suited to the organization's size, structure, specific circumstances and anticipated workload. The following tasks set out in steps one to eleven should be addressed by the local public body as far in advance as possible before the *Act* goes into effect. Although they are arranged for the most part in relative priority, many of these tasks may be ongoing simultaneously within the implementation process.

- Step 1: Establish the structure necessary to administer FOIP:
  - appoint a FOIP Contact;
  - forecast volume and type of requests; and
  - establish an appropriate support team.
- Step 2: Establish a training plan and conduct awareness training.
- Step 3: Develop a communications plan.
- Step 4: Develop procedures for tracking and responding to access requests.
- Step 5: Pass a FOIP by-law or legal resolution:
  - designate the head of the local public body;
  - if desired, delegate the powers, functions and duties of the head; and
  - adopt a fee structure under FOIP.
- Step 6: Review records management and archives practices.
- Step 7: Develop entries for the *Local Public Body Directory of Records* and personal information bank descriptions.
- Step 8: Decide what information will be available to the public without a FOIP request.
- Step 9: Review manuals and guidelines.
- Step 10: Develop a plan to ensure compliance with the privacy protection provisions of the *FOIP Act*.
- Step 11: Review contracting practices.









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